

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

REGIONAL PRODUCE COOPERATIVE
CORPORATION, d/b/a PHILADELPHIA
WHOLESALE PRODUCE MARKET,

Plaintiff,

V.

TD BANK, N.A.,

Defendant.

Case No.: 2:19-cv-01883-MSG

**DEFENDANT TD BANK N.A.’S MOTION TO DISMISS
AND SUPPORTING MEMORANDUM OF LAW**

Under Federal Rule of Civil Procedure 12(b)(6), and the Court’s June 5, 2019 Order (Dkt. 12), Defendant TD Bank N.A. (“**TD Bank**”) respectfully moves this Court for an order dismissing Plaintiff Regional Produce Cooperative Corporation, d/b/a Philadelphia Wholesale Produce Market (“**RPCC**”)’s Complaint. The claims against TD Bank should be dismissed with prejudice for *six* reasons:

First, RPCC's claims are barred by the statute of limitations;

Second, the Pennsylvania Uniform Commercial Code (“***PA UCC***”) bars RPCC’s common law claims concerning the alleged unauthorized transactions;

Third, there is no private right of action under the Bank Secrecy Act that permits RPCC's negligence claim for improper account opening;

Fourth, RPCC fails to state a negligence claim based on 13 Pa. C.S. §§3405 and 3406 because RPCC failed to timely report any unauthorized transactions to TD Bank;

Fifth, RPCC fails to state a plausible claim for conversion because (a) an action for conversion may not be brought by the issuer, like RPCC, and (b) RPCC never alleges that TD

Bank possessed the requisite intent to exercise dominion or control over RPCC's funds required for a claim for conversion; and

Sixth, RPCC fails to state a plausible claim for aiding and abetting conversion because (a) Pennsylvania does not recognize a claim for aiding and abetting conversion, and (b) RPCC has not alleged any of the elements of a claim for aiding and abetting.

In support, TD Bank relies on and incorporates by reference the contemporaneously filed Memorandum of Law. TD Bank respectfully requests oral argument on this motion.

Respectfully submitted,

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